



**DEPARTMENT OF TRANSPORTATION**

**[4910-EX-P]**

**Federal Motor Carrier Safety Administration**

**49 CFR Part 389**

**[Docket No. FMCSA-2016-0341]**

**RIN 2126-AB96**

**Rulemaking Procedures Update**

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** FMCSA proposes to amend its rulemaking procedures by revising the process for preparing and adopting rules, petitions, and direct final rules. Also, the Agency adds new definitions, and makes general administrative corrections throughout its rulemaking procedures.

These proposed actions are authorized under the Fixing America's Surface Transportation (FAST) Act and the Administrative Procedure Act (APA).

**DATES:** Comments on this document must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments identified by Docket Number FMCSA-2016-0341 using any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.

- Hand Delivery or Courier: West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Fax: 202-493-2251.

To avoid duplication, please use only one of these four methods. See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Mr. Bivan R. Patnaik, Chief, Regulatory Development Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590 0001 or by telephone at 202-366-8092 or Bivan.Patnaik@dot.gov.

If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

#### **SUPPLEMENTARY INFORMATION:**

This NPRM is organized as follows:

- I. Public Participation and Request for Comments
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- N. National Technology Transfer and Advancement Act (Technical Standards)
- O. Environment (NEPA, CAA, Environmental Justice)

## **I. PUBLIC PARTICIPATION AND REQUEST FOR COMMENTS**

### **A. Submitting Comments**

If you submit a comment, please include the docket number for this NPRM (Docket No. FMCSA-2016-0341), indicate the specific section of this document to which each section of your comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, put the docket number, FMCSA-2016-0341, in the keyword box, and click "Search." When the new screen appears, click on the "Comment Now!" button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period and may change this proposed rule based on your comments. FMCSA may issue a final rule at any time after the close of the comment period.

**B. Viewing Comments and Documents**

To view comments, as well as any documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>. Insert the docket number, FMCSA-2016-0341, in the keyword box, and click “Search.” Next, click the “Open Docket Folder” button and choose the document to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**C. Privacy Act**

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at [www.dot.gov/privacy](http://www.dot.gov/privacy).

**D. Waiver of Advance Notice of Proposed Rulemaking**

Under section 5202 of the FAST Act (Pub. L. 114-94, 129 Stat. 1312, 1534, December 4, 2015; 49 U.S.C. 31136(g)), if a proposed rule regarding commercial motor vehicle safety is likely to lead to the promulgation of a major rule, FMCSA is required to publish an advance notice of proposed rulemaking (ANPRM), or proceed with a negotiated rulemaking, unless the Agency finds good cause that both would be impracticable, unnecessary, or contrary to the public interest. As today’s NPRM is not proposing any requirements regarding commercial

motor vehicle safety and would not lead to promulgation of a major rule, FMCSA finds that publication of an ANPRM or proceeding with a negotiated rulemaking are unnecessary and contrary to the public interest in this case.

## **II. LEGAL BASIS FOR THE RULEMAKING**

The FAST Act requires FMCSA to address its rulemaking and petitions procedures. Specifically, section 5202 provides requirements for the Agency to follow regarding the development of proposed rulemakings [49 U.S.C. 31136(f)-(h)]. Section 5204 also directs the Agency to be more transparent to the public regarding how FMCSA prioritizes and defines petitions.

The APA (5 U.S.C. 551-706) established procedures for all Federal agencies to use in developing rules and regulations. It also established the standards that allow the public to participate in a rulemaking as well as the opportunity to petition the Federal government for the issuance, amendment, or repeal of a rule. The APA authorizes those proposed changes to Part 389, beyond what is required by the FAST Act.

## **III. DISCUSSION OF PROPOSED RULEMAKING**

FMCSA proposes several changes to the regulatory procedural requirements found in 49 CFR part 389. These changes fall into the three general categories outlined below, and are explained in further detail in the section-by-section analysis.

### **A. Advance Rulemaking Procedures Required**

FMCSA proposes new rulemaking provisions required by the FAST Act where the Agency must consider undertaking a negotiated rulemaking or an ANPRM for all major rules regarding commercial motor vehicle safety. However, the FAST Act allows the Administrator to waive this requirement in instances where those tools would be impracticable, unnecessary, or

contrary to the public interest. Additionally, the NPRM proposes a definition of a “major rule” as defined in the Congressional Review Act (5 U.S.C. 801). FMCSA would use this definition to determine whether an ANPRM or negotiated rulemaking process is necessary.

B. Definition and Processing of a Petition

Under the current FMSA regulations (49 CFR part 389) for submitting petitions, there is no regulatory definition of a petition. However, section 5204 of the FAST Act clearly defines the term “petition.” It includes requests for: a new regulation; a regulatory interpretation or clarification; or a determination by FMCSA that a regulation should be modified or eliminated for one of several enumerated reasons prescribed in section 5204. FMCSA proposes to include this definition in part 389.

Additionally, under this proposal, part 389 would be revised to include a new process for filing and addressing petitions. These changes are being proposed in order to clarify FMCSA’s procedures for rulemaking, and to make editorial changes.

Finally, FMCSA proposes to define what “written or in writing” means to include electronic documentation.

C. Direct Final Rulemaking Procedures

Under FMCSA’s current direct final rulemaking (DFR) procedures, if the Agency receives a notice of intent (NOI) to file an adverse comment, the DFR will be withdrawn, even if the comment that is eventually filed does not meet the definition of an adverse comment found in 49 CFR 389.39(b). FMCSA proposes to change this requirement. Upon receiving an NOI to file an adverse comment, the Agency would extend the comment period rather than withdraw the DFR, allowing the commenter additional time to file. Once FMCSA receives the comment, the Agency would determine whether it is adverse. If it is an adverse comment, FMCSA would

withdraw the DFR; however, if it does not meet the definition in § 389.39(b), the Agency would move forward with the DFR. If the same or another commenter submits an NOI at the end of the extended comment period, FMCSA will determine, on a case-by-case basis, whether to extend the comment period again, withdraw the DFR, or proceed with the DFR using only the comments already received.

#### **IV. INTERNATIONAL IMPACTS**

The FMCSRs, and any exceptions to the FMCSRs, apply only within the United States (and, in some cases, United States territories). Motor carriers and drivers are subject to the laws and regulations of the countries that they operate in, unless an international agreement states otherwise. Drivers and carriers should be aware of the regulatory differences amongst nations.

#### **V. SECTION-BY-SECTION ANALYSIS**

Throughout part 389, FMCSA would change the term “rule making” to “rulemaking” for consistency.

##### Section 389.3 Definitions.

FMCSA would add new definitions of “major rule,” “petitions,” and “written or in writing” to § 389.3.

##### Section 389.13 Initiation of rulemaking.

In § 389.13, FMCSA would redesignate the existing text into paragraph (a) and would add paragraphs (b)(1) through (b)(3).

Proposed paragraph (b) of section 389.13 and its subparagraphs include the advanced public participation requirements from section 5202 of the FAST Act.

##### Section 389.15 Contents of notices of proposed rulemaking.

The title of § 389.15 is changed by removing the space between “rule” and “making.”

#### Section 389.21 Submission of written comments.

FMCSA proposes revising § 389.21 to include direction on how comments should be submitted. The Agency would remove the text regarding incorporation by reference, as it is not relevant to the topic of comment submission. FMCSA also proposes renaming the section heading to “Submission of written comments” to reflect this change.

#### Section 389.29 Adoption of final rules.

In § 389.29, FMCSA makes minor changes to the text to clarify the procedure followed when the Agency finalizes a rule.

#### Section 389.31 Petitions for rulemaking.

In § 389.31(a) the word “repeal” would be replaced with “withdraw” to more accurately describe the removal of a regulation. In paragraph (b)(1) the word “duplicate” would be replaced with “writing” to make use of and follow the definition of this term, proposed in § 389.3. This proposed change would also reflect that the Agency no longer requires duplicate submissions.

#### Section 389.39 Direct final rulemaking procedures.

In § 389.39, FMCSA would remove language regarding the withdrawal of a DFR if the Agency receives an NOI to submit an adverse comment. Upon receipt of an NOI, the Agency would extend the comment period to give the submitter additional time to file the comment. Once submitted, the comment would be reviewed to determine if it is an adverse comment, and proceed according to the results of that analysis (either to withdraw the DFR if the comment is adverse, or to move forward with the DFR if it is not).

## **VI. REGULATORY ANALYSES**

### **A. E.O. 12866 (Regulatory Planning and Review and DOT Regulatory Policies and Procedures as Supplemented by E.O. 13563)**



This NPRM is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by E.O. 13563 (76 FR 3821, January 21, 2011), and is also not significant within the meaning of DOT regulatory policies and procedures (DOT Order 2100.5 dated May 22, 1980; 44 FR 11034, February 26, 1979) and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

This rule is procedural in nature, primarily impacting FMCSA's process for promulgation of regulations. As a result, there would be no costs associated with this NPRM.

## **B. Regulatory Flexibility Act (Small Entities)**

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term "small entities" comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.<sup>1</sup> Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities, and mandates that agencies strive to lessen any adverse effects on these businesses.

FMCSA does not expect this NPRM to have a significant economic impact on a substantial number of small entities. Consequently, I certify that the action would not have a significant economic impact on a substantial number of small entities. FMCSA invites comment from members of the public who believe there will be a significant impact either on small businesses or on governmental jurisdictions with a population of less than 50,000.

## **C. Assistance for Small Entities**

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<sup>1</sup> Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) see National Archives at <http://www.archives.gov/federal-register/laws/regulatory-flexibility/601.html>

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, FMCSA wants to assist small entities in understanding this NPRM so that they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the NPRM will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance; please consult the FMCSA point of contact, Mr. Bivan Patnaik, listed in the **For Further Information Contact** section of this NPRM.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business Administration's Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of FMCSA, call 1-888-REG-FAIR (1-888-734-3247). DOT has a policy regarding the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

#### **D. Unfunded Mandates Reform Act of 1995**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$156 million (which is the value equivalent of \$100,000,000 in 1995, adjusted for inflation to 2015 levels) or more in any one year. As the proposed rule is procedural in nature and is not expected to result in any costs at the societal level, it would likewise not impose costs to State, local, or tribal governments.

#### **E. Paperwork Reduction Act (Collection of Information)**

This NPRM calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### **F. E.O. 13132 (Federalism)**

A rule has implications for Federalism under Section 1(a) of Executive Order 13132 if it has “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” FMCSA has determined that this NPRM would not have substantial direct costs on or for States, nor would it limit the policymaking discretion of States. Nothing in this document preempts any State law or regulation. Therefore, this NPRM does not have sufficient Federalism implications to warrant the preparation of a Federalism Impact Statement.

#### **G. E.O. 12988 (Civil Justice Reform)**

This NPRM meets applicable standards in sections 3(a) and 3(b) (2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### **H. E.O. 13045 (Protection of Children)**

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, Apr. 23, 1997), requires agencies issuing "economically significant" rules, if the regulation also concerns an environmental health or safety risk that an agency has reason to believe may disproportionately affect children, to include an evaluation of the regulation's environmental health and safety effects on children. The Agency determined this NPRM is not economically significant. Therefore, no analysis of the impacts on children is required. In any event, the Agency does not anticipate that this regulatory action would in any respect present an environmental or safety risk that could disproportionately affect children.

## **I. E.O. 12630 (Taking of Private Property)**

FMCSA reviewed this NPRM in accordance with E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and has determined it will not effect a taking of private property or otherwise have taking implications.

## **J. Privacy**

Section 522 of title I of division H of the Consolidated Appropriations Act, 2005, enacted December 8, 2004 (Pub. L. 108-447, 118 Stat. 2809, 3268, 5 U.S.C. 552a note), requires the Agency to conduct a privacy impact assessment (PIA) of a regulation that will affect the privacy of individuals. This NPRM does not require the collection of personally identifiable information (PII).

The Privacy Act (5 U.S.C. 552a) applies only to Federal agencies and any non-Federal agency which receives records contained in a system of records from a Federal agency for use in a matching program.

The E-Government Act of 2002, Pub. L. 107-347, § 208, 116 Stat. 2899, 2921 (Dec. 17, 2002), requires Federal agencies to conduct PIA for new or substantially changed technology that collects, maintains, or disseminates information in an identifiable form.

No new or substantially changed technology would collect, maintain, or disseminate information as a result of this NPRM. As a result, FMCSA has not conducted a privacy impact assessment.

## **K. E.O. 12372 (Intergovernmental Review)**

The regulations implementing E.O. 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this NPRM.

## **L. E.O. 13211 (Energy Supply, Distribution, or Use)**

FMCSA has analyzed this NPRM under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Agency has determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, it does not require a Statement of Energy Effects under E.O. 13211. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

#### **M. E.O. 13175 (Indian Tribal Governments)**

This NPRM does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### **N. National Technology Transfer and Advancement Act (Technical Standards)**

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) are standards that are developed or adopted by voluntary consensus standards bodies. This NPRM does not use

technical standards. Therefore, FMCSA did not consider the use of voluntary consensus standards.

#### **O. Environment (NEPA, CAA, Environmental Justice)**

FMCSA analyzed this rule for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and determined this action is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1(69 FR 9680, March 1, 2004), Appendix 2, paragraph 6.x. The Categorical Exclusion (CE) in paragraph 6.x. addresses regulations implementing procedures for the issuance, amendment, revision and rescission of Federal motor carrier regulations (e.g., the establishment of procedural rules that would provide general guidance on how the agency manages its notice-and-comment rulemaking proceedings, including the handling of petitions for rulemakings, waivers, exemptions, and reconsiderations, and how it manages delegations of authority to carry out certain rulemaking functions.). The content in this rule is covered by this CE and the proposed action would not have any effect on the quality of the environment. The CE determination is available for inspection or copying in the Federal eRulemaking Portal: <http://www.regulations.gov>.

FMCSA also analyzed this rule under the Clean Air Act, as amended (CAA), section 176(c) (42 U.S.C. 7401 et seq.), and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's general conformity requirement since it does not affect direct or indirect emissions of criteria pollutants.

Under E.O. 12898, each Federal agency must identify and address, as appropriate, "disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations" in the United

States, its possessions, and territories. FMCSA evaluated the environmental justice effects of this proposed rule in accordance with the E.O., and has determined that no environmental justice issue is associated with this proposed rule, nor is there any collective environmental impact that would result from its promulgation.

### **List of Subjects in 49 CFR Part 389**

Administrative practice and procedure, Highway safety, Motor carriers, Motor vehicle safety.

In consideration of the foregoing, FMCSA proposes to amend 49 CFR chapter III, part 389 to read as follows:

## **PART 389—RULEMAKING PROCEDURES—FEDERAL MOTOR CARRIER SAFETY REGULATIONS**

1. The authority citation for part 389 is revised to read as follows:

**Authority:** Authority: 49 U.S.C. 113, 501 et seq., subchapters I and III of chapter 311, chapter 313, and 31502; sec. 5204 of Pub. L. 114-94, 129 Stat. 1312. 1536, 42 U.S.C. 4917; and 49 CFR 1.87.

2. Amend § 389.3 by adding definitions of *Major rule*, *Petition*, and *Written or in writing* in alphabetical order to read as follows:

### **§ 389.3 Definitions.**

\* \* \* \* \*

*Major rule* means:

(1) Any rule that the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget finds has resulted in or is likely to result in:

(i) An annual effect on the economy of \$100,000,000 or more;

(ii) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(iii) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

(2) The term does not include any rule promulgated under the Telecommunications Act of 1996 and the amendments made by that Act.

*Petition* means a request for:

(1) A new regulation;

(2) A regulatory interpretation or clarification; or

(3) A determination made by the Administrator that a regulation should be modified or eliminated because it is:

(i) No longer:

(A) Consistent and clear;

(B) Current with the operational realities of the motor carrier industry; or

(C) Uniformly enforced.

(ii) Ineffective; or

(iii) Overly burdensome.

*Written or in writing* means printed, handwritten, typewritten either on paper or other tangible medium, or by any method of electronic documentation such as electronic mail.

### **§ 389.7 [Amended]**

3. Amend § 389.7 by removing the term “rule making” and add the term “rulemaking” in its place.



4. Revise § 389.13 to read as follows:

**§ 389.13 Initiation of rulemaking**

(a) The Administrator initiates rulemaking on his/her own motion. However, in so doing, he/she may, in his/her discretion, consider the recommendations of his/her staff or other agencies of the United States or of other interested persons.

(b) If a proposed rule regarding commercial motor vehicle safety is likely to lead to the promulgation of a major rule, the Administrator, before publishing such proposed rule, shall--

(1) Issue an advance notice of proposed rulemaking that:

(i) Identifies the need for a potential regulatory action;

(ii) Identifies and requests public comment on the best available science or technical information relevant to analyzing potential regulatory alternatives;

(iii) Requests public comment on the available data and costs with respect to regulatory alternatives reasonably likely to be considered as part of the rulemaking; and

(iv) Requests public comment on available alternatives to regulation; or

(2) Proceed with a negotiated rulemaking.

(3) This paragraph does not apply to a proposed rule if the Administrator, for good cause, finds (and incorporates the finding and a brief statement of reasons for such finding in the proposed or final rule) that an advance notice of proposed rulemaking is impracticable, unnecessary, or contrary to the public interest.

**§ 389.15 [Amended]**

5. In § 389.15, paragraph (a), remove the term “rule making” and add the term “rulemaking” in its place.

6. Revise § 389.21 to read as follows:

**§ 389.21 Submission of written comments.**

(a) You may submit comments identified by the docket number provided in the rulemaking document using any of the following methods. To avoid duplication, please use only one of these four methods.

(1) *Federal eRulemaking Portal*: <http://www.regulations.gov>. Follow the online instructions for submitting comments.

(2) *Mail*: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.

(3) *Hand Delivery or Courier*: West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

(4) *Fax*: 202-493-2251.

(b) All written comments must be submitted in English and include copies of any material that the commenter refers to within the comment.

7. Revise § 389.29 to read as follows:

**§ 389.29 Adoption of final rules.**

Final rules are prepared by representatives from all relevant offices of FMCSA. The final rule is then submitted to the Administrator for his/her consideration. If the Administrator adopts the rule, and once approved by the Office of the Management and Budget, if necessary, the final rule is published in the Federal Register, unless all persons subject to the final rule are named and personally served with a copy of it.

8. Revise § 389.31 to read as follows:

**§ 389.31 Petitions for rulemaking.**

(a) Any interested person may petition the Administrator to establish, amend, or withdraw a rule.

(b) Each petition filed under this section must:

(1) Be submitted in writing to the Administrator, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave., SE., Washington, DC 20590-0001;

(2) Set forth the text or substance of the rule or amendment proposed, or specify the rule that the petitioner seeks to have repealed, as the case may be;

(3) Explain the interest of the petitioner in the action requested;

(4) Contain any information, data, research studies, and arguments available to the petitioner to support the action sought.

9. In § 389.39, redesignate paragraphs (c) and (d) as paragraphs (d) and (e), respectively, add new paragraph (c), and revise newly redesignated paragraphs (d) and (e) to read as follows:

**§ 389.39 Direct final rulemaking procedures.**

\* \* \* \* \*

(c) *Extension of comment period.* FMCSA will extend the comment period for a direct final rule if it receives a notice of intent to submit an adverse comment. Upon receipt of the comment, FMCSA will determine if it is an adverse comment or not.

(d) *Confirmation of effective date.* FMCSA will publish a confirmation rule document in the Federal Register, if it has not received an adverse comment by the specified date in the direct final rule or any comment extension document. The confirmation rule document tells the public the effective date of the rule.

*(e) Withdrawal of a direct final rule.* (1) If FMCSA receives an adverse comment within the original or extended comment period, it will publish a rule document in the Federal Register before the effective date of the direct final rule advising the public and withdrawing the direct final rule.

(2) If FMCSA withdraws a direct final rule because of an adverse comment, the Agency may issue a notice of proposed rulemaking if it decides to pursue the rulemaking.

Issued under authority delegated in 49 CFR 1.87 on: July 31, 2017.

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Daphne Y. Jefferson  
Deputy Administrator

[FR Doc. 2017-16452 Filed: 8/4/2017 8:45 am; Publication Date: 8/7/2017]